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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



FILE:  Office: Vermont Service Center

Date: **MAY 07 2003**

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(ii)

ON BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala who was present in the United States without a lawful admission or parole on May 10, 1993. He was served with an Order to Show Cause on June 19, 1995. On November 12, 1996, an immigration judge found the applicant deportable and granted him until February 10, 1997, to depart the United States voluntarily in lieu of removal. The applicant failed to depart by that date. Therefore he is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii). The applicant states that he left the United States voluntarily in April 1997 but returned unlawfully on June 10, 1997. Therefore, the applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. §. 1182(a)(9)(C)(i)(II), for having reentered the United States without being admitted after having been ordered removed.

The applicant married [REDACTED] a native and citizen of Guatemala, on June 26, 2001, and she became a lawful permanent resident on August 13, 2001. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii).

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, the applicant disagrees with that decision and submits documentation relating to his Application for Suspension of Deportation and Cancellation of Removal on Form I-881.

Section 212(a)(9)(A) of the Act provides, in part, that:

(i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 of the Act or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now Secretary of Homeland Security] has consented to the alien's reapplying for admission.

Section 212(a)(9)(C) of the Act provides that:

(i) Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

The record reflects that the applicant was granted voluntary departure until February 10, 1997. He failed to depart by that date. The applicant stated on his Form I-881 that he departed the United States on April 3, 1997, triggering his deportation, and he returned to the United States unlawfully on June 10, 1997. Therefore, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and must remain outside the United States for at least 10 years before the Service will consider his application for permission to reapply.

Further, section 241(a)(5) of the Act, .8 U.S.C § 1231(a)(5), provides that:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

The applicant unlawfully reentered the United States after April 1, 1997, the effective date of section 241(a)(5), and is subject to the provisions of section 241(a)(5) of the Act. Therefore, he is not eligible for any relief under this Act and the appeal will be dismissed. See *Matter of G-N-C-*, 22 I&N Dec. 281, 297, 299 (BIA 1998). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.